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4 File No. 09-09418

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BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING,
6 LP

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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **SANTA ROSA DIVISION**

11 In re:

12 RICHARD ALAN BRANDT, JR. AND
13 ANDREA MARIE BRANDT FKA ANDREA
MARIE LOMBARDI,

14 Debtors

Case No.: 09-12925 AJ

Chapter 13

R.S. No. N/A

Confirmation Hearing –

Date: November 16, 2009

Time: 01:30 P.M.

Place: U.S. BANKRUPTCY COURT

99 South E Street

Santa Rosa, CA 95404

Courtroom N/A

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17 **OBJECTIONS TO PROPOSED CHAPTER 13 PLAN AND CONFIRMATION**
18 **THEREOF**

19 BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS
20 SERVICING, LP, Secured Creditor in the above-entitled Bankruptcy proceeding, hereby
21 submits the following Objections to Confirmation of that certain Chapter 13 Plan proposed by
Debtor:

22 This objecting Secured Creditor holds the Trust Deed on the Debtors' property generally
23 described as 772 Brush Creek Lane, Santa Rosa, CA 95404 and legally described as:

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1 SEE LEGAL DESCRIPTION ATTACHED HERETO AS **EXHIBIT "1"** AND
2 MADE A PART HEREOF.

3 As of September 9, 2009, the amount in default was \$63,404.94, representing monthly
4 payments and late charges due from November 1, 2008 through September 1, 2009; advances
5 for taxes and insurance, if any; and foreclosure costs and attorneys' fees incurred with respect to
6 the default.

7 Section 1325 of the Bankruptcy Code sets forth the requirements for confirmation of a
8 Chapter 13 Plan. Among other things, the Court must make a finding that the plan is feasible as
9 a condition to confirmation.

10 Here the Debtors have listed on Schedule I three primary sources of income from which
11 they intend to fund the plan – income from real property in the amount of \$0.00 and regular
12 income from regular income from operation of business, unemployment and family assistance in
13 the amount of \$10,759.00.

14 The Plan fails to provide for repayment of the pre petition arrears. The Plan does not
15 propose a reasonable schedule and time period for the payment of arrearages on the trust deed
16 obligations of the Debtor. The payoff period and monthly repayment amount proposed by
17 Debtor are unreasonable considering Debtor's past non-payment history. Further, the
18 repayment sum will not fully pay off the arrearages currently owing to Secured Creditor over
19 the term of the Plan. To cure the actual pre-petition arrearages within 36 months, Secured
20 Creditor must receive \$1,761.25 per month from the Debtors through the Plan.

21 The proposed Chapter 13 plan in this case appears to have been filed in bad faith, as it
22 appears the Debtors are also attempting to modify the senior lien through confirmation of the
23 plan. Debtors have failed to list substantial prepetition arrears owed to secured creditor and
24 have listed an ongoing mortgage payment, which is substantially less than the actual monthly

1 payment. Their apparent attempt to sneak a lien strip the 1st on their principal residence
2 through confirmation and their presentation of a Plan that has no basis in law or in fact, is a
3 violation of Rule 9011 of the Federal Rules of Bankruptcy Procedure. Further, proposing a Plan
4 in bad faith is also a violation of Section 1325 of the Bankruptcy Code and the Plan should not
5 be confirmed.

6 The Debtor has failed to comply with 11 U.S.C. §1322(b)(5). Since filing the instant
7 bankruptcy petition, Debtors have failed to maintain the regular monthly Trust Deed payments.
8 Accordingly, the Plan may not be confirmed.

9 The proposed Chapter 13 Plan is not feasible. Therefore, the Plan cannot be confirmed.
10 11 U.S.C. §1325(a)(6). Attached hereto as **Exhibits "2" and "3"** are Debtors' Schedule I—
11 Income and Schedule J—Expenses, indicating that Debtors have excess income of only \$603.00
12 per month. The payment to Secured Creditor alone through Debtors' Chapter 13 Plan must be
13 \$1,761.25 per month.

14 Secured Creditor's Objections to Confirmation are supported by the Declaration of
15 PAUL CHEA.

16 CONCLUSION

17 Any Chapter 13 Plan proposed by Debtors must provide for Secured Creditor's claim
18 and eliminate the Objections specified above in order to be reasonable and to comply with
19 applicable provisions of the Bankruptcy Code. It is respectfully requested that confirmation of
20 the Debtor's proposed Chapter 13 Plan be denied and the case be dismissed.

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WHEREFORE, Secured Creditor prays as follows:

- (1) That confirmation of the proposed Chapter 13 Plan be denied.
- (2) For dismissal of the Chapter 13 proceeding.
- (3) For such other relief as this Court deems proper.

MILES, BAUER, BERGSTROM & WINTERS, LLP

Dated: 10/02/09 By: /s/ Matthew D. Tokarz
Matthew D. Tokarz, Esq.
Attorney for Movant